

**Antonin Scalia Law School
George Mason University
Flex LLM Program**

Business Associations

2-credit course
Spring 2024

Instructor
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Syllabus¹

Course Overview

I am very excited that we will be spending the next seven weeks studying the law of Business Associations together! This course is an interesting combination of four different areas of business law: agency, partnership, corporations, and limited liability companies (LLCs). Each of these four areas of law could be their own course; however, the purpose of this particular seven-week program is to prepare you for the D.C. bar exam. As a result, this course seeks to cover the business associations topics that are most frequently tested on the D.C. bar exam. As you will see below, this course kicks off with one week each on agency law and partnership law, followed by four weeks of corporate law, and concluding with one week of LLCs.

Student Learning Objectives

Students will be able to identify and analyze frequently tested topics on the D.C. bar exam in the areas of agency, partnership, corporations, and LLCs.

Students will be able to identify and analyze whether an agency relationship has been formed and the contract and tort liability consequences resulting from such relationship.

Students will be able to identify and analyze the various fiduciary obligations in agency, partnership, corporations, and LLCs.

Students will be able to identify and analyze whether a partnership has been formed and the related partners' property and management rights.

Students will be able to identify and analyze issues associated with dissociation and dissolution in partnerships and LLCs.

¹ This syllabus is subject to change, although any changes are likely to be minor revisions in the required assignments section. In the unlikely event that a change to the syllabus occurs after the course has started, an announcement will be made in advance on Blackboard.

Students will be able to identify and analyze whether a corporation has been formed and whether corporate promoters are liable for preincorporation contracts.

Students will be able to identify and analyze whether a plaintiff can pierce the corporate and LLC veils.

Students will be able to identify and analyze whether the business judgment rule applies to corporate board decisions and whether a corporate director can be liable for a breach of the duty of care or duty of loyalty.

Students will be able to identify and analyze various corporate shareholder issues, including the process associated with shareholder derivative suits, shareholder inspection rights, and proxy voting revocation.

Students will be able to identify and analyze various corporate merger and acquisition issues, including the transactional requirements, the de facto merger doctrine, and dissenting shareholders' appraisal rights.

Students will be able to identify and analyze whether an LLC has been formed and whether the LLC operating agreement can alter the default duties of care and loyalty.

Required Casebook and Other Authorities

The required casebook for this course is Stephen M. Bainbridge, *Business Associations: Cases and Materials on Agency, Partnerships, LLCs, and Corporations* (11th ed. 2021) [Referred to below as "Bainbridge"]

In addition to the casebook, the required reading for this course will also include substantial provisions of the Restatement (3d) of Agency, the Revised Uniform Partnership Act, the Model Business Corporation Act, and the Uniform Limited Liability Company Act. These authorities are either publicly available or accessible through Westlaw, Lexis, or another legal research provider. Copies of these authorities (other than the Restatement) can also be found in the "Course Materials" tab on Blackboard.

Grading, Assignments, and Final Exam

The grade for this course is based on a total of 700 points, with 100 points assigned to each of two written legal assignments and 500 points assigned to a final exam at the end of the course. The written legal assignments are referred to throughout this course as "IRAC Assignments" because you will be required in these written assignments to review a hypothetical fact pattern and respond to specific questions using the IRAC method of legal analysis, which stands for issue, rule, analysis, and conclusion. Hopefully by this point in the LLM program you are very familiar with the IRAC method of analysis, but if you need a refresher, please see the content on the "IRAC Guidelines and Documentation" tab in Blackboard.

The IRAC Assignments and the final exam for this class are structured to align with the way in which the D.C. bar exam is most likely to test your Business Associations knowledge. On the D.C. bar exam, Business Associations is not tested with multiple choice questions; it is instead tested by the presentation of hypothetical facts followed by specific questions that raise legal issues associated with agency, partnerships, corporations, or LLCs. For this reason, your assignments in this class require written IRAC analyses of hypothetical facts.

For the two modules when there are IRAC Assignments, they will be identified under the heading of “Complete and Submit” in the Required Activities section below. You will find the assignment itself under the “IRAC Assignments” tab on Blackboard. IRAC Assignments must be submitted by 11:59pm on the date they are due (see specific due dates below).

We will have a live review session during the final week of class, as part of Module 7 (the last module of the course). This will be an opportunity for you to ask any questions you have about the material in a live virtual setting. A more formal announcement that confirms the date and time for the live review session will go out as we get closer to the end of the semester.

The final exam is due by 11:59pm on Sunday, April 21, 2024. The final exam will be a timed examination that will be made available starting on Friday, April 19, 2024, through Sunday, April 21, 2024. To simulate as much as possible the sort of time limitations that will apply during the bar exam, you will have five (5) hours to complete the final exam from the moment you open the examination file. ***Therefore, please do not open the final exam file until you are ready to take and complete the final exam in a single five-hour period.***

Use of Generative Artificial Intelligence

Pursuant to proposed Academic Regulation 4.3, the use of generative artificial intelligence (“GAI,” defined below) is not permitted except as the professor expressly permits in writing in the course syllabus. For this class, GAI may **NOT** be used on any graded assignments, including the IRAC Assignments and the final exam. Otherwise, I encourage you to experiment with the use of GAI as much as possible in non-graded work. If you want to use GAI and are not sure whether your planned use is permitted, ***please ask me before you act!***

Definition: Generative artificial intelligence (GAI) is a type of artificial intelligence that uses algorithms to generate new content, such as text or images, based on the data it has been trained on. For purposes of this definition, GAI is not intended to encompass legal research databases and word processing applications that, while incorporating AI-based elements or enhancements, do not generate novel text. ChatGPT and other chatbots are good examples of GAI as that term is used here.

Important Reminders

Please regularly check the Announcements tab in Blackboard, which is where I will post important information and reminders about the course.

*Most importantly, **please never hesitate to ask questions!*** Business Associations can be an unfamiliar and complex area of law; it certainly was to me when I first encountered it! Asking questions is how we will advance our learning of this subject matter, so please ask questions when you have them. I'd like to strongly encourage everyone to ask their questions by posting them on the "General Course Questions" tab in Blackboard, which will allow us to all learn together. I will respond publicly to any posted questions. If, however, you'd like to email me directly, you can do so at jderr@gmu.edu, but please know that I will post a copy of my answer to the "General Course Questions" tab (with your name removed, of course) so that everyone can learn from your insightful questions.

Throughout the semester I will also be available for **virtual Q&A "office hours" sessions** during the modules. I expect to hold two of these sessions in the evening on Zoom from approximately 8:30pm ET to 9:30pm ET. Final details will be posted to the Announcements tab on Blackboard.

Required Activities

The following are the required activities for this course, organized by module. As mentioned earlier, once the course begins, **one module must be completed each week for a total of seven weeks**. Each module includes content that you must "Read" and "Watch." For modules when there are IRAC Assignments, they will be identified within that module under the heading of "Complete and Submit," and you will find the assignment itself under the "IRAC Assignments" tab on Blackboard. IRAC Assignments must be submitted by 11:59pm on the date they are due (see specific due dates below). ***Please note that there is an IRAC Assignment due during Modules 3 and 5.***

The following outlines the required activities for this course, and **you can access this content on the "Course Content" tab in Blackboard.**

MODULE 1: Required Activities

- Read and Watch:
 - *Lesson 1: Introduction and Creation of the Agency Relationship*
 - Read Bainbridge Pages 1-12 (*Gorton v. Doty*; *A. Gay Jenson Farms Co. v. Cargill, Inc.*)
 - Read Restatement (Third) of Agency, Sections 1.01 through 1.04 (skim "Comments and Illustrations")
 - Watch "Module 1, Lesson 1: Introduction and Creation of Agency Relationship"

- *Lesson 2: Liability of Principal to Third Parties in Contract and Tort (Plus Agent's Potential Contract Liability)*
 - Read Bainbridge Pages 13-16; 34-37; 41-46 (*Mill Street Church of Christ v. Hogan*; *Botticello v. Stefanovicz*; *Atlantic Salmon A/S v. Curran*; Servant (aka Employee) Versus Independent Contractor)
 - Read Restatement (Third) of Agency, Sections 2.01 through 2.06; Sections 6.01 through 6.04; and Section 7.07, including 7.07 comments *b*, *c*, *d*, and *f* (skim all other Restatement "Comments and Illustrations")
 - Watch "Module 1, Lesson 2: Liability of Principal to Third Parties in Contract and Tort (Plus Agent's Potential Contract Liability)"

- *Lesson 3: Agents' Fiduciary Obligations*
 - Read Bainbridge Pages 82-84; 86-88 (*Reading v. Regem*; *Rash v. J.V. Intermediate, Ltd.*)
 - Read Restatement (Third) of Agency, Sections 8.01 through 8.06, plus 8.11 (skim "Comments and Illustrations")
 - Watch "Module 1, Lesson 3: Agents' Fiduciary Obligations"

MODULE 2: Required Activities

- Read and Watch:
 - *Lesson 1: Partnership: Introduction, Formation, and Property*
 - Read Bainbridge Pages 93-97; 98-102; 108-111; 138-140 (*Fenwick v. Unemployment Compensation Commission*; *Martin v. Peyton*; *Young v. Jones*; *In re Fulton*)
 - Read Revised Uniform Partnership Act (RUPA) Sections 102, 104, 105, 106, 107, 201, 202, 203, 204, 306, 308, 401
 - Watch "Module 2, Lesson 1: Introduction, Partnership Formation, and Partnership Property"

 - *Lesson 2: Partners' Management Rights and Fiduciary Obligations*
 - Read Bainbridge Pages 111-117; 124-131; 140-44 (*National Biscuit Company v. Stroud*; *Summers v. Dooley*; *Meinhard v. Salmon*; *Meehan v. Shaughnessy*)
 - Read RUPA Sections 401, 408, 409
 - Watch "Module 2, Lesson 2: Partners' Management Rights and Fiduciary Obligations"

 - *Lesson 3: Partnership Dissociation and Dissolution*
 - Read Bainbridge Pages 150-152; 152-157 (Dissociation and Dissolution; *Giles v. Giles Land Company*)
 - Read RUPA 601, 602, 603, 701, 702, 703, 704, 801, 802, 804, 805, 806
 - Watch "Module 2, Lesson 3: Partnership Dissociation and Dissolution"

MODULE 3: Required Activities

- Read and Watch:
 - *Lesson 1: Introduction and Corporate Formation*
 - Read Bainbridge “Note on Corporate Formation,” pages 181-83 and 183-89 (*Boilermakers Local 154 Retirement Fund v. Chevron Corporation*)
 - Read Model Business Corporation Act (MBCA) Sections 1.20, 1.40, 2.01, 2.02, 2.03, 2.05, 2.06, 3.01, 3.02, 4.01
 - Watch “Week 3, Lesson 1: Introduction and Corporate Formation”
 - *Lesson 2: Limited Liability and Piercing the Corporate Veil*
 - Read Bainbridge Pages 190-93; 196-202 (*Walkovszky v. Carlton* (skip dissent); *Sea-Land Services, Inc. v. Pepper Source*)
 - Read MBCA Section 6.22
 - Watch “Week 3, Lesson 2: Limited Liability and Piercing the Corporate Veil”
 - *Lesson 3: Liability for Preincorporation Contracts and Introduction to Corporate Finance Terminology*
 - Read *Quaker Hill, Inc. v. Parr*, 364 P.2d 1056 (Colo. 1961) and *McArthur v. Times Printing Co.*, 51 N.W. 216 (Minn. 1892) [note: these two cases are not in your casebook but can be pulled down online and read prior to reviewing the lesson 3 lecture video]
 - Read MBCA Section 2.04 (plus the “Official Comment” to this section)
 - Watch “Week 3, Lesson 3: Liability for Preincorporation Contracts and Introduction to Corporate Finance Terminology”
- Complete and Submit:
 - **Module 3 IRAC Assignment: Agency and Partnership (Due at 11:59PM on Sunday, March 24, 2024).** You can find the assignment and the instructions for completing it under the "IRAC Assignments" tab on the left side of the menu bar.

MODULE 4: Required Activities

- Read and Watch:
 - *Lesson 1: Corporate Duty of Care and the Business Judgment Rule*
 - Read Bainbridge Pages 225-49 (*Kamin v. American Express Company*, *Smith v. Van Gorkom*, Note on *Cinerama, Inc. v. Technicolor, Inc.*, Note on Legislative Response, and *Francis v. United Jersey Bank*)
 - Read Model Business Corporation Act (MBCA) Sections 8.30, 8.31, and 2.04(b)(4) (exculpation provision)

- Watch “Week 4, Lesson 1: Corporate Duty of Care and the Business Judgment Rule”
- *Lesson 2: Corporate Duty of Loyalty and the MBCA's Statutory "Safe Harbor" Provisions*
 - Read Bainbridge Pages 251-56, 263-67, 284-86 (*Bayer v. Beran, Broz v. Cellular Information Systems, Inc.*, and *Fliegler v. Lawrence*)
 - Read MBCA Subchapter F (including “Introductory Comment,” Sections 8.60 through 8.63, and the Official Comment to 8.60 on “Fair to the Corporation”); and also Subchapter G (including Section 8.70)
 - Watch “Week 4, Lesson 2: Corporate Duty of Loyalty and the MBCA's Statutory 'Safe Harbor' Provisions”
- *Lesson 3: Fiduciary Duties in Close Corporations*
 - Read Bainbridge Pages 598-610; 615-18 (*Wilkes v. Springside Nursing Home, Inc.*, *Ingle v. Glamore Motor Sales, Inc.*, *Smith v. Atlantic Properties, Inc.*)
 - Read MBCA Sections 14.30, 14.34
 - Watch “Week 4, Lesson 3: Fiduciary Duties in Close Corporations”

MODULE 5: Required Activities

- Read and Watch:
 - *Lesson 1: Shareholder Direct and Derivative Actions*
 - Read Bainbridge Pages 314-18; 320-28 (*In re Medtronic, Inc. Shareholder Litigation*, *Grimes v. Donald*)
 - Read Model Business Corporation Act (MBCA) Sections 7.40, 7.41, 7.42, 7.43, 7.44, 7.45, 7.46
 - Watch “Module 5, Lesson 1: Shareholder Direct and Derivative Actions”
 - *Lesson 2: Shareholder Voting Overview and Inspection Rights*
 - Read Bainbridge Pages 541-47; 550-53 (Introduction, *AmerisourceBergen Corporation v. Lebanon County Employees' Retirement Fund* and *State ex rel. Pillsbury v. Honeywell, Inc.*)
 - Read MBCA Sections 7.01, 7.02, 7.21, 7.25, 7.28, 8.03, 8.08, 16.01, 16.02, 16.03, 16.20
 - Watch “Module 5, Lesson 2: Shareholder Voting Overview and Inspection Rights”
 - *Lesson 3: Proxy Voting Introduction and Irrevocable Proxies in Close Corporations*

- Read Bainbridge Pages 483-491 (Proxy Fights, Introduction; *Levin v. Metro-Goldwyn-Mayer, Inc.*; *Rosenfeld v. Fairchild Engine & Airplane Corp.*)
 - Read MBCA Section 7.22 (including the Official Comment), 7.30, 7.31
 - Watch “Module 5, Lesson 3: Proxy Voting Introduction and Irrevocable Proxies in Close Corporations”
- Complete and Submit:
 - **Module 5 IRAC Assignment: Corporate Law (Due at 11:59PM on Sunday, April 7, 2024).** You can find the assignment and the instructions for completing it under the "IRAC Assignments" tab on the left side of the menu bar

MODULE 6: Required Activities

- Read and Watch:
 - *Lesson 1: Mergers and Acquisitions: Introduction, Statutory Mergers, and Sales of All or Substantially All Corporate Assets*
 - Read Model Business Corporation Act (MBCA) Chapter 11 Introductory Comment and Sections 11.01, 11.02, 11.03, 11.04, 11.06, 11.07, 12.01, 12.02
 - Watch “Module 6, Lesson 1: Mergers and Acquisitions: Introduction, Statutory Mergers, and Sales of All or Substantially All Corporate Assets”
 - *Lesson 2: Freeze-out/Squeeze-out Mergers and De Facto Merger Doctrine*
 - Read Bainbridge Pages 675-697 (*Farris v. Glen Alden Corporation*; *Hariton v. Arco Electronics, Inc.*; *Weinberger v. UOP, Inc.*)
 - Watch “Module 6, Lesson 2: Freeze-out/Squeeze-out Mergers and De Facto Merger Doctrine”
 - *Lesson 3: Mergers and Acquisitions: Appraisal Rights and Remedies*
 - Read MBCA Sections 13.01, 13.02, 13.20, 13.21, 13.22, 13.23, 13.24, 13.26, 13.30, 13.31
 - Watch “Module 6, Lesson 3: M&A Appraisal Rights and Remedies”

MODULE 7: Required Activities

- Read and Watch:
 - *Lesson 1: LLC Introduction, Formation, and Piercing the LLC Veil*
 - Read Bainbridge Pages 871-77 and 891-98 (*Duray Development, LLC v. Perrin* and *NetJets. Aviation, Inc. v. LHC Communications, LLC*)

- Read Uniform Limited Liability Company Act (ULLCA) Sections 102, 104, 105 (including Comment), 108, 109, 112, 201, 304, 401, 404, and 407
- Watch “Module 7, Lesson 1: LLC Introduction, Formation, and Piercing the LLC Veil”
- *Lesson 2: LLC Fiduciary Obligations, Dissociation, and Dissolution*
 - Read Bainbridge Pages 899-904 and 916-22 (*McConnell v. Hunt Sports Enterprises*, *Reese v. Newman*, and Statutory Framework)
 - Read ULLCA Sections 409, 105(d) & (e), 601, 602, 603, 701, 702, 703
 - Watch “Module 7, Lesson 2: LLC Fiduciary Obligations, Dissociation, and Dissolution”
- *Attend Live Review Session*
 - In place of a third lesson this week, we will be having a live review session to prepare for the final exam. The date and time of the review session will be sent out as an announcement as we get closer to the date.
- Complete and Submit the Final Exam
 - The final exam will be distributed on Friday, April 19, 2024, and it is **due no later than 11:59pm on Sunday, April 21, 2024**. The final exam will be a timed examination. You will have five (5) hours to complete the final exam from the moment you open the file. ***Therefore, please do not open the final exam file until you are ready to take and complete the final exam in a single five-hour period.***